

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

VERNE HACKBARTH,

Plaintiff,

vs.

LAWYERS TITLE OF NEVADA, *et al.*,

Defendants.

2:08-cv-0997-JCM-GWF

**ORDER**

Presently before the court are defendants' motion to dismiss (doc. # 5) and plaintiff's motion for reconsideration (doc. #16). This case originated with plaintiff's allegations of breach of contract, negligence, deceptive trade practices, fraud and misrepresentation, unjust enrichment, fraudulent conveyance and recovery, and "violations of state law." (Doc. 1.) Plaintiff also alleged violations of both 18 U.S.C. § 1961 and 42 U.S.C. § 1983.

Defendants moved to dismiss this action for failure to state a claim upon which relief could be granted and for lack of jurisdiction. (Doc. #5.) As noted by the defendants, plaintiff failed to plead his § 1961 RICO claim with the particularity required by Fed. R. Civ. P. 9(b). Therefore, plaintiff's RICO claim must be dismissed. *See Moore v. Kayport Package Exp., Inc.*, 885 F.2d 531, 541 (9th Cir. 1989). Likewise, this court will dismiss plaintiff's civil rights claim under § 1983 because plaintiff has not alleged that the defendants were acting under color of state law. *See Franklin v. Fox*, 312 F.3d 423, 444 (2002). Finding that no federal claims remain, this court declines jurisdiction over the remaining state law claims.


1           Additionally, document #16 provides insufficient legal and factual bases for this  
2 court's reconsideration of its previous order denying plaintiff's request for temporary access to the  
3 property at issue in this case. As both parties note, this court may grant a motion for reconsideration  
4 if 1) it is presented with newly discovered evidence, 2) it committed clear error or the initial decision  
5 was manifestly unjust, or 3) if there was an intervening change in the controlling law. *See Nunes v.*  
6 *Ashcroft*, 375 F.3d. 805, 807-08 (9th Cir. 2004) (quoting *School Dist. No. 1J v. ACandiS, Inc.*, 5 F.3d  
7 1255, 1263 (9th Cir. 1993)). Plaintiff has made no such showing in his motion for reconsideration.

8           Accordingly,

9           IT IS HEREBY ORDERED, ADJUDGED AND DECREED that defendants' motion  
10 to dismiss (Doc. # 5) be, and the same hereby is, GRANTED.

11           IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff's motion  
12 for reconsideration (Doc. #16) be, and the same hereby is, DENIED.

13  
14           DATED this 29<sup>th</sup> day of October, 2008.

15  
16             
17           UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24  
25  
26